



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/417,428	10/13/99	LYMAN	D 1923-48641

QM12/1006

GEORGE W NEUNER
DIKE BRONSTEIN ROBERTS AND CUSHMAN LLP
130 WATER STREET
BOSTON MA 02109

EXAMINER

CEGIELNIK, U

ART UNIT

PAPER NUMBER

3712

DATE MAILED: 10/06/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/417,428

Applicant(s)

Lyman

Examiner

Urszula M. Cegielnik

Group Art Unit

3712



☒ Responsive to communication(s) filed on Jul 24, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-17 ~~is~~ are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-17 ~~is~~ are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is finally rejected under 35 U.S.C. 102(b) as being anticipated by Ballard.

Ballard discloses a round clicker that has a center portion; a substantially planar peripheral portion surrounding the center portion; the center portion having a concave/convex shape, and manual manipulation of the device inverts the first and second surfaces between the two equilibrium positions.

3. Claim 1 is finally rejected under 35 U.S.C. 102(b) as being anticipated by Davis. Davis discloses a jumping toy that has all the features of the instant claimed invention. The two equilibrium positions are stable for a few seconds.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-17 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Davis. Davis discloses all the features of the instant claimed invention except for the device having

dimensions of a particular range; the device being made of a particular polymeric material; the surfaces having an illustration or different textures; the polymeric material being a colored resin, and the scent being added to the material. It is an obvious design choice as to what type of dimensions the device has; what type of material the device is made from; the device has an illustration on its surface; a scent added to the material, and the texture of the surface. It would have been obvious to modify the device of Davis to provide it in various sizes, textures, colors, and scent as claimed for the purpose of making the device more amusing and interesting to play with.

Response to Arguments

6. Applicant's arguments filed 24 July 2000 have been fully considered but they are not persuasive. With respect to claim 1, the applicant has submitted that the Davis reference does not teach a device having a substantially planar peripheral portion surrounding a center portion, or that it has two stable equilibrium portions. The examiner in turn submits that the Davis reference does teach the device as having a substantially planar peripheral portion as shown in Figure 1 of the drawings. Also, the reference states that the equilibrium is affected by the quality of the rubber forming the wall of the toy. It mentions that if the rubber is too stiff or too soft, that it would affect the functionality of the toy. In essence if the wall was to be formed of sufficiently thin rubber, then it would easily assume a convex or concave shape when force is applied. Furthermore, the reference implies that an equilibrium must be present in order for the toy to work properly. Regarding the manual manipulation of the device as stated in the claim, this could be construed as placing the device of Davis on a table. Davis also teaches a device that is disk-shaped and has a diameter of approximately 2 inches as described in claim 2.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

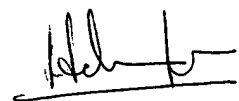
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Urszula Cegielnik whose telephone number is (703) 306-5806. The examiner can normally be reached Monday through Friday from 8:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacob Ackun, can be reached on (703) 308-3867. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3579.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Urszula M. Cegielnik
Assistant Examiner


Jacob K. Ackun
Primary Examiner